Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. L-50449 January 30, 1982

FILINVEST CREDIT CORPORATION, plaintiff-appellee,
vs.
PHILIPPINE ACETYLENE, CO., INC., defendant-appellant.

DE CASTRO, *J.:*

This case is certified to Us by the Court of Appeals in its Resolution [1] dated March 22, 1979 on the ground that it involves purely questions of law, as raised in the appeal of the decision of the Court of First Instance of Manila, Branch XII in Civil Case No. 91932, the dispositive portion of which reads as follows:

> In view of the foregoing consideration, the court hereby renders judgment -
>
> l) directing defendant to pay plaintiff:
>
> > a) the sum of P22,227.81 which is the outstanding unpaid obligation of the defendant under the assigned credit, with 12 %interest from the date of the firing of the complaint in this suit until the same is fully paid;
> >
> > b) the sum equivalent to l5% of P22,227.81 as and for attorney's fees; and
>
> 2) directing plaintiff to deliver to, and defendant to accept, the motor vehicle, subject of the chattel may have been changed by the result of ordinary wear and tear of the vehicle.
>
> Defendant to pay the cost of suit.
>
> SO ORDERED.

The facts, as found in the decision [2] subject of the instant appeal, are undisputed.

On October 30, 1971, the Philippine Acetylene Co., Inc., defendant-appellant herein, purchased from one Alexander Lim, as evidenced by a Deed of Sale marked as Exhibit G, a motor vehicle described as Chevorlet, 1969 model with Serial No. 136699Z303652 for P55,247.80 with a down payment of P20,000.00 and the balance of P35,247.80 payable, under the terms and conditions of the promissory note (Exh. B), at a monthly installment of P1,036.70 for thirty-four (34) months, due and payable on the first day of each month starting December 1971 through and inclusive September 1, 1974 with 12 % interest per annum on each unpaid installment, and attorney's fees in the amount equivalent to 25% of the total of the outstanding unpaid amount.

As security for the payment of said promissory note, the appellant executed a chattel mortgage (Exh. C) over the same motor vehicle in favor of said Alexander Lim. Subsequently, on November 2, 1971. Alexander Lim assigned to the Filinvest Finance Corporation all his rights, title, and interests in the promissory note and chattel mortgage by virtue of a Deed of Assignment (Exh. D).

Thereafter, the Filinvest Finance Corporation, as a consequence of its merger with the Credit and Development Corporation assigned to the new corporation, the herein plaintiff-appellee Filinvest Credit Corporation, all its rights, title, and interests on the aforesaid promissory note and chattel mortgage (Exh. A) which, in effect, the payment of the unpaid balance owed by defendant-appellant to Alexander Lim was financed by plaintiff-appellee such that Lim became fully paid.

Appellant failed to comply with the terms and conditions set forth in the promissory note and chattel mortgage since it had defaulted in the payment of nine successive installments. Appellee then sent a demand letter (Exh. 1)

whereby its counsel demanded "that you (appellant) remit the aforesaid amount in full in addition to stipulated interest and charges or return the mortgaged property to my client at its office at 2133 Taft Avenue, Malate, Manila within five (5) days from date of this letter during office hours. " Replying thereto, appellant, thru its assistant general- manager, wrote back (Exh. 2) advising appellee of its decision to "return the mortgaged property, which return shall be in full satisfaction of its indebtedness pursuant to Article 1484 of the New Civil Code." Accordingly, the mortgaged vehicle was returned to the appellee together with the document "Voluntary Surrender with Special Power of Attorney To Sell" [3] executed by appellant on March 12, 1973 and confirmed to by appellee's vice-president.

On April 4, 1973, appellee wrote a letter (Exh. H) to appellant informing the latter that appellee cannot sell the motor vehicle as there were unpaid taxes on the said vehicle in the sum of P70,122.00. On the last portion of the said letter, appellee requested the appellant to update its account by paying the installments in arrears and accruing interest in the amount of P4,232.21 on or before April 9, 1973.

On May 8, 1973, appellee, in a letter (Exh. 1), offered to deliver back the motor vehicle to the appellant but the latter refused to accept it, so appellee instituted an action for collection of a sum of money with damages in the Court of First Instance of Manila on September 14, 1973.

In its answer, appellant, while admitting the material allegations of the appellee's complaint, avers that appellee has no cause of action against it since its obligation towards the appellee was extinguished when in compliance with the appellee's demand letter, it returned the mortgaged property to the appellee, and that assuming arguendo that the return of the property did not extinguish its obligation, it was nonetheless justified in refusing payment since the appellee is not entitled to recover the same due to the breach of warranty committed by the original vendor-assignor Alexander Lim.

After the case was submitted for decision, the Court of First Instance of Manila, Branch XII rendered its decision dated February 25, 1974 which is the subject of the instant appeal in this Court.

Appellant's five assignment of errors may be reduced to, or said to revolve around two issues: first, whether or not the return of the mortgaged motor vehicle to the appellee by virtue of its voluntary surrender by the appellant totally extinguished and/or cancelled its obligation to the appellee; second, whether or not the warranty for the unpaid taxes on the mortgaged motor vehicle may be properly raised and imputed to or passed over to the appellee.

Consistent with its stand in the court a quo, appellant now reiterates its main contention that appellee, after giving appellant an option either to remit payment in full plus stipulated interests and charges or return the mortgaged motor vehicle, had elected the alternative remedy of exacting fulfillment of the obligation, thus, precluding the exercise of any other remedy provided for under Article 1484 of the Civil Code of the Philippines which reads:

> Article 1484. Civil Code. - In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:
>
> 1) Exact fulfillment of the obligation, should the vendee fail to pay;
>
> 2) Cancel the sale, should the vendee's failure to pay cover two or more installments;
>
> 3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.

In support of the above contention, appellant maintains that when it opted to return, as in fact it did return, the mortgaged motor vehicle to the appellee, said return necessarily had the effect of extinguishing appellant's obligation for the unpaid price to the appellee, construing the return to and acceptance by the appellee of the mortgaged motor vehicle as a mode of payment, specifically, dation in payment or dacion en pago which according to appellant, virtually made appellee the owner of the mortgaged motor vehicle by the mere delivery thereof, citing Articles 1232, 1245, and 1497 of the Civil Code, to wit:

> Article 1232. Payment means not only the delivery of money but also the performance, in any manner, of an obligation.
>
> xxx xxx xxx
>
> Article 1245. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.
>
> xxx xxx xxx

> Article 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

Passing at once on the relevant issue raised in this appeal, We find appellant's contention devoid of persuasive force. The mere return of the mortgaged motor vehicle by the mortgagor, the herein appellant, to the mortgagee, the herein appellee, does not constitute dation in payment or *dacion en pago* in the absence, express or implied of the true intention of the parties. *Dacion en pago*, according to Manresa, is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of obligation. [4] In *dacion en pago*, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. [5] In any case, common consent is an essential prerequisite, be it sale or innovation to have the effect of totally extinguishing the debt or obligation.

The evidence on the record fails to show that the mortgagee, the herein appellee, consented, or at least intended, that the mere delivery to, and acceptance by him, of the mortgaged motor vehicle be construed as actual payment, more specifically dation in payment or *dacion en pago.* The fact that the mortgaged motor vehicle was delivered to him does not necessarily mean that ownership thereof, as juridically contemplated by dacion en pago, was transferred from appellant to appellee. In the absence of clear consent of appellee to the proferred special mode of payment, there can be no transfer of ownership of the mortgaged motor vehicle from appellant to appellee. If at all, only transfer of possession of the mortgaged motor vehicle took place, for it is quite possible that appellee, as mortgagee, merely wanted to secure possession to forestall the loss, destruction, fraudulent transfer of the vehicle to third persons, or its being rendered valueless if left in the hands of the appellant.

A more solid basis of the true intention of the parties is furnished by the document executed by appellant captioned "Voluntary Surrender with Special Power of Attorney To Sell" dated March 12, 1973, attached as Annex "C" of the appellant's answer to the complaint. An examination of the language of the document reveals that the possession of the mortgaged motor vehicle was voluntarily surrendered by the appellant to the appellee authorizing the latter to look for a buyer and sell the vehicle in behalf of the appellant who retains ownership thereof, and to apply the proceeds of the sale to the mortgage indebtedness, with the undertaking of the appellant to pay the difference, if any, between the selling price and the mortgage obligation. With the stipulated conditions as stated, the appellee, in essence was constituted as a mere agent to sell the motor vehicle which was delivered to the appellee, not as its property, for if it were, he would have full power of disposition of the property, not only to sell it as is the limited authority given him in the special power of attorney. Had appellee intended to completely release appellant of its mortgage obligation, there would be no necessity of executing the document captioned "Voluntary Surrender with Special Power of Attorney To Sell." Nowhere in the said document can We find that the mere surrender of the mortgaged motor vehicle to the appellee extinguished appellant's obligation for the unpaid price.

Appellant would also argue that by accepting the delivery of the mortgaged motor vehicle, appellee is estopped from demanding payment of the unpaid obligation. Estoppel would not he since, as clearly set forth above, appellee never accepted the mortgaged motor vehicle in full satisfaction of the mortgaged debt.

Under the law, the delivery of possession of the mortgaged property to the mortgagee, the herein appellee, can only operate to extinguish appellant's liability if the appellee had actually caused the foreclosure sale of the mortgaged property when it recovered possession thereof. [6] It is worth noting that it is the fact of foreclosure and actual sale of the mortgaged chattel that bar the recovery by the vendor of any balance of the purchaser's outstanding obligation not satisfied by the sale. [7] As held by this Court, if the vendor desisted, on his own initiative, from consummating the auction sale, such desistance was a timely disavowal of the remedy of foreclosure, and the vendor can still sue for specific performance. [8] This is exactly what happened in the instant case.

On the second issue, there is no dispute that there is an unpaid taxes of P70,122.00 due on the mortgaged motor vehicle which, according to appellant, liability for the breach of warranty under the Deed of Sale is shifted to the appellee who merely stepped into the shoes of the assignor Alexander Lim by virtue of the Deed of Assignment in favor of appellee. The Deed of Sale between Alexander Lim and appellant and the Deed of Assignment between Alexander Lim and appellee are very clear on this point. There is a specific provision in the Deed of Sale that the seller Alexander Lim warrants the sale of the motor vehicle to the buyer, the herein appellant, to be free from liens and encumbrances. When appellee accepted the assignment of credit from the seller Alexander Lim, there is a specific agreement that Lim continued to be bound by the warranties he had given to the buyer, the herein appellant, and that if it appears subsequently that "there are such counterclaims, offsets or defenses that may be interposed by the debtor at the time of the assignment, such counterclaims, offsets or defenses shall not prejudice the FILINVEST FINANCE CORPORATION and I (Alexander Lim) further warrant and hold the said corporation free and harmless from any such claims, offsets, or defenses that may be availed of." [9]

It must be noted that the unpaid taxes on the motor vehicle is a burden on the property. Since as earlier shown, the ownership of the mortgaged property never left the mortgagor, the herein appellant, the burden of the unpaid taxes should be home by him, who, in any case, may not be said to be without remedy under the law, but definitely not against appellee to whom were transferred only rights, title and interest, as such is the essence of assignment of credit. [10]

WHEREFORE, the judgment appealed from is hereby affirmed *in toto* with costs against defendant-appellant.

SO ORDERED.

Barredo (Chairman), Aquino, Concepcion, Jr., Ericta and Escolin, JJ., concur.

Separate Opinions

ABAD SANTOS, *J.,* concurring:

I concur in the result.

When the appellant returned the vehicle and executed the document entitled, "Voluntary Surrender with Special Power of Attorney to Sell" said acts did not result in the fulfillment of its obligation under Art. 1884(l) of the Civil Code. On the contrary the document indicated that the appellee was to foreclose the chattel mortgage. The surrender of the car to the appellee was a mere preparatory act for its sale in a foreclosure of the chattel mortgage.

After the appellee discovered, without negligence on its part, that foreclosure of the chattel mortgage was impractical, it had the right which it exercised to abandon the chattel mortgage and demand fulfillment of the obligation.

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Footnotes

1 p. 33, Rollo.

2 p. 61, Record on Appeal., p. 11, Rollo.

3 p. 54, Annex "C", Record on Appeal, p. I 1, Rollo.

4 8 Manresa 324, cited in 4 Tolentino Commentaries & Jurisprudence on the Civil Code of the Philippines, 282 (1973).

5 4 Tolentino Commentaries & Jurisprudence on the Civil Code of the Philippines, 283 (1973); 4 Paras, Civil Code of the Philippines Annotated 288 (9th ed., 1978).

6 Northern Motors, Inc. vs. Casiano Sapinoso 33 SCRA 356 (1970); Universal Motors Corp. vs. Dy Hian Tat et. al., 28 SCRA 161 (1969); Manila Motors Co., Inc. vs. Fernandez, 99 Phil. 782 (1956).

7 New Civil Code, par. 3 Article 1484.

8 Industrial Finance Corp. vs. Tobias, 78 SCRA 28 (1977); Radiowealth Inc. vs. Lavin, 7 SCRA 804 (1963); Pacific Commercial Co. vs. dela Rama, 72 Phil. 380 (1941).

9 Annex "C", Record on Appeal, p. 33, Rollo.

10 New Civil Code, Article 1627.

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